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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 5

FRED L. SHUTTLESWORTH,

Petitioner,

—v.—

CITY OF BIRMINGHAM.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF ALABAMA

BRIEF FOR PETITIONER

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FRED L. SHUTTLESWORTH,

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CITY OF BIRMINGHAM.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF ALABAMA

BRIEF FOR PETITIONER

Opinions Below

The orders of the Supreme Court of Alabama denying the petition for writ of certiorari to the Court of Appeals (R. 146) and denying a rehearing (R. 147) are reported at 276 Ala. 707, 161 So. 2d 799 (1964). The opinion of the Court of Appeals (R. 137-41) is reported at 42 Ala. App. 296, 161 So. 2d 796 (1963). The order denying a rehearing (R. 141) is noted at 42 Ala. App. 296, 161 So. 2d 796 (1964). The judgment and sentences of the Tenth Judicial Circuit Court of Alabama are unreported (R. 10-12). The judgment and sentences of the Recorder's Court of the City of Birmingham are unreported (R. 2).

Jurisdiction

The final judgment of the Court of Appeals of Alabama, which is the order denying a rehearing, was entered on January 7, 1964 (R. 141). A petition for certiorari filed in the Supreme Court of Alabama was denied on February 20, 1964 (R. 146) and an application for rehearing was denied March 26, 1964 (R. 147). On June 19, 1964, by order of Justice Black, the time within which to file a petition for writ of certiorari was extended to August 23, 1964 (R. 148). The petition was filed August 21, 1964 and was granted March 1, 1965 (R. 149).

The jurisdiction of this Court is invoked pursuant to 28 U. S. C. §1257(3), petitioner having asserted below, and asserting here, deprivation of rights, privileges and immunities secured by the Constitution of the United States.

Constitutional and Statutory Provisions Involved

1. This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

2. This case also involves:

SECTION 1142 OF THE GENERAL CITY CODE OF BIRMINGHAM AS AMENDED BY ORDINANCE NO. 1436-F:

Streets and Sidewalks to be Kept Open For Free Passage.

Any person who shall obstruct any street or sidewalk or part thereof in any manner not permitted by this code or other ordinance of the City with any animal or vehicle, or with boxes or barrels, glass, trash, rubbish

or display of wares, merchandise or sidewalk signs, or other like things, so as to obstruct the free passage of persons on such streets or sidewalks or any part thereof, or who shall assemble a crowd or hold a public meeting in any street without a permit, shall, on conviction, be punished as provided in Section 4.

It shall be unlawful for any person or any number of persons to so stand, loiter or walk upon any street or sidewalk in the City as to obstruct free passage over, on or along said street or sidewalk. It shall also be unlawful for any person to stand or loiter upon any street or sidewalk of the City after having been requested by any police officer to move on.

SECTION 1231 OF THE GENERAL CITY CODE OF BIRMINGHAM:

Obedience to Police.

It shall be unlawful for any person to refuse or fail to comply with any lawful order, signal or direction of a police officer.

Questions Presented

1. Whether, on its face and as applied to one who questions a policeman's order, an ordinance making it an offense to stand or loiter on any sidewalk in the city after having been requested by any policeman to move on is vague and overbroad in violation of the First and Fourteenth Amendments.

2. Whether, on its face and as applied to one who stands conversing on a sidewalk within a group of ten or twelve

persons—the entire group occupying one half the sidewalk—an ordinance making it an offense to so stand, loiter or walk on any sidewalk in the city as to obstruct free passage over, on or along the sidewalk is vague and overbroad in violation of the First and Fourteenth Amendments.

3. Whether, under an ordinance which has been construed as making it an offense to refuse or fail to comply with an order of a policeman relating to vehicular traffic, there is any evidence consistent with due process of law to sustain petitioner's conviction, where the only police order shown by the prosecution is a policeman's order directed to a group of pedestrians standing on a sidewalk, commanding them to disperse.

Statement of the Case

On April 4, 1962, the petitioner, Reverend Fred L. Shuttlesworth, was arrested by four or five police officers[1] at the corner of Second Avenue and 19th Street North in the City of Birmingham, Alabama. This case challenges his convictions for loitering and noncompliance with a police order on that occasion, pursuant to which he has been sentenced to 180 days imprisonment at hard labor, and an additional 61 days imprisonment at hard labor in default of

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[1] Technically, Patrolman Byars made the arrest and denied that other officers assisted him (R. 30). But Officers Hallman and Davis testified that Byars beckoned them to the scene and that they arrived prior to the arrest (R. 59, 64, 74). Officer Renshaw, who had also come up behind Byars, regarded himself as having assisted by his presence in the arrest (R. 48). Officer Allred was a short distance off at the time (R. 66-67).

fine and costs (R. 10-11). The following statement of the circumstances of his arrest is taken from the testimony of the arresting officers unless otherwise indicated; where based on uncontradicted testimony of defense witnesses, that source is noted.

On April 4, 1962, the Negro citizens of Birmingham were engaged in a boycott of the downtown department stores (R. 89, 122: uncontradicted testimony of defense witness Armstrong and of petitioner). Word of the boycott was known to the police (R. 43-44, 63, 78), including Patrolman Byars (R. 24-25). At about 10:30 a.m. Byars observed a group of four or six persons, including petitioner, walking south on the west sidewalk of 19th Street toward the intersection of 19th Street and Second Avenue (R. 16, 25, 35).[2] Newberry's Department Store is located at the northwest corner of that intersection (R. 17), having a front entrance on the corner (R. 17, 26). Byars entered a rear entrance of Newberry's, went through the store to the front entrance, and stood inside the entrance observing the corner (R. 16-17, 18, 26). On the corner, he saw a group of ten or twelve persons (R. 17, 27, 38, 138)[3] "all congregated in one area" (R. 17), "[s]tanding and listening and talking" (R. 17). Petitioner Shuttlesworth was among them (R. 17) and seems to have been at the center of the conversation (R. 38).

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[2] Byars conceded that the group was not obstructing traffic and was not violating any ordinance at this time (R. 25-26).

[3] When Officer Renshaw arrived after Byars had accosted the group, Renshaw estimated that there were eight or ten or twelve persons with petitioner (R. 40, 49). Officer Hallman, who seems to have observed the group at about the same moment, estimated that there were five or six persons with petitioner and petitioner's co-defendant below, Reverend James S. Phifer (R. 59), or five or six in all (R. 60). Officer Allred guessed the size of the group at the time as ten or fifteen or twenty (R. 71). Officer Davis put it at ten or twelve (R. 74).

Byars observed the group "for a minute to a minute and a half while they stood" (R. 18; see R. 26). He then left the store and told the group to move on and clear the sidewalk (R. 18, 138). Some but not all of the group began to move away (R. 18, 138). Byars repeated his command and petitioner asked: "You mean to say we can't stand here on the sidewalk?" (R. 18; cf. R. 38). At this moment, motorcycle patrolman Renshaw arrived on the scene and came up behind Patrolman Byars (R. 41, 47-48, 51). Officers Hallman and Davis, on a motion from Byars, came over from the southeast corner of the intersection (R. 59, 64, 74). Byars "said nothing in return. [He] . . . only hesitated again for a short time and informed them for the third and last time [he] . . . was informing them they would have to move and clear the sidewalk or else they would be placed under arrest for obstructing the sidewalk. . . . " (R. 18). By now, all persons save petitioner had dispersed (R. 28, 35, 60, 138-139). Petitioner repeated his inquiry whether the officer meant that they could not stand in front of the store (R. 18).[4] Byars told petitioner he was under arrest (R. 18). Petitioner said: "Well I will go into the store" (R. 18, 41, 139), and walked to Newberry's, where Byars followed him through the door and arrested him just inside (R. 18, 139). Petitioner offered no resistance and gave "[n]o trouble" (R. 30; see R. 55).[5] Byars estimated the time during which

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[4] Byars' testimony is not consistent on what, if anything, petitioner said at this time. At another point, Byars testified that petitioner's second question was: "Do you mean to tell me we can't go into the store?" (R. 20). Officer Renshaw testified that at this stage of the conversation, petitioner said: "We are just standing here on the sidewalk" (R. 41).

[5] Byars then took petitioner to the west curb of 19th Street just north of Second Avenue to await transportation to jail. Reverend James S. Phifer, one of petitioner's companions and

his three orders to disperse were given and petitioner arrested as one and one half minutes (R. 32).

There is considerable confusion in the officer's testimony as to the location of the group of ten or twelve persons standing on the corner outside Newberry's and as to how much, if at all, pedestrian traffic was impeded by their presence. Byars placed the group on the corner "in the western half of the western cross walk . . . " (R. 17)[6] but later testified they were "[j]ust east and north of the [east-west 19th Street] cross walk on the sidewalk" (R. 21). Renshaw placed them "at the curb on the 2nd Avenue side at the cross walk that crosses over 2nd Avenue" (R. 42), i.e., at the north-south crosswalk. Concerning the density of pedestrian traffic, Byars testified "There was some people moving back and forth" (R. 17). Traffic was "normal for a Wednesday at that particular time of day" (R. 20); Byars estimated that 75 to 100 pedestrians per minute were passing through the intersection, in all four directions, on all four corners (R. 30-31; see also R. 57). He said that: "On some occasions people who were walking in an easterly direction on the north side of 2nd Avenue had to go into the

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his co-defendant in the present trial, approached and began talking to petitioner. Byars twice told him that he could not talk to Shuttlesworth, who was a prisoner; and when Phifer continued to talk to petitioner, Byars arrested Phifer as well (R. 19, 32-33). Phifer's conviction of loitering and noncompliance with a police order after joint trial with petitioner below was reversed by the Alabama Court of Appeals, which found the evidence insufficient to sustain either charge. *Phifer* v. *City of Birmingham*, 42 Ala. App. 282, 160 So. 2d 898 (1963), *cert. denied*, 160 So. 2d 902 (Ala. 1964).

[6] When Byars says "in the . . . cross walk" he means on the sidewalk in front of the crosswalk. The record is clear that none of the group were in the street at any time; Byars explicitly testified that they were all on the sidewalk (R. 27).

street to get around the people who were standing there" (R. 17). Byars saw some people step off the curb (R. 20) into Second Avenue (R. 39), and said that "Due to the people moving in an westerly direction along 2nd Avenue they would have had to have waited until those people got by or either elect to go into the street to pass the group of people standing there" (R. 20; see R. 138). Again, the persons standing on the corner "were blocking half of the sidewalk causing the people walking east ["Along 2nd Avenue"] to go into the street around them" (R. 28). However, on cross examination, Byars testified that the persons on the corner did not block the east-west crosswalk at all (R. 22)[7] and that they left more than half of the north-south crosswalk free (R. 22). Officer Renshaw estimated that the group occupied "about half" the sidewalk (R. 41). They "had the crosswalk [sic] approximately half blocked" (R. 50). Actual disruption of pedestrian traffic must have been slight, for Officer Hallman, who was assigned to work traffic at the intersection (R. 61) and who was standing on the southeast corner of Second Avenue and 19th Street North (R. 59), saw the group standing on the northwest corner but took no note of them as a source of concern prior to Patrolman Byars' arrival on the scene (R. 62-63).

Although Byars testified that he had read of prior arrests of petitioner Shuttlesworth (R. 22-23) and had seen petitioner's photograph and seen him on television (R. 23)—and although Officer Renshaw conceded that petitioner was a notorious person in Birmingham by reason of his civil

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[7] Yet Byars testified he told the group to move on in order to allow free passage for pedestrians east and west (R. 18).

rights activities (R. 45-46; see also R. 77-78)[8]—Byars insisted that he was not familiar with petitioner's face at the time of the arrest (R. 23, 29; cf. R. 16). Byars said he "didn't pay particular notice to the race" of the persons in the group on the corner (R. 27), and at trial did not "know what color they were" (R. 36). He identified them as a group because "They were all standing and not moving" (R. 36). Officer Renshaw acknowledged that the group was all Negro (R. 49), and Officer Davis described them as "a group of colored people" (R. 73). The trial court permitted defense testimony that, because of the boycott, there were few other Negroes in the area at the time, making petitioner's group conspicuous (R. 89, 122: uncontradicted testimony of defense witness Armstrong and of petitioner). Other attempts by petitioner to show that his arrest and prosecution were racial harassment were disallowed by the trial court on prosecutor's objections (R. 115-116).

Petitioner's version of the events of April 4, 1962, supported by his testimony and that of his co-defendant Phifer and four other witnesses, was entirely irreconcilable with that of the arresting officers which the state courts credited. Petitioner with his five companions was walking south on 19th Street; slowed at the intersection of Second Avenue for a traffic light; was immediately accosted by Patrolman Byars and ordered to move on (Patrolman Byars, however, stationed himself directly in petitioner's path so that petitioner could not continue in the direction in which he had been walking); attempted to move on by going into Newberry's; and was pursued and arrested (R. 80-84, 87-89, 90-94, 100-104, 106-108, 111-112).

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[8] Renshaw admitted knowing petitioner by sight (R. 40) and recognizing him on the morning of April 4 (R. 48).

April 5, 1962, petitioner was tried and convicted in the Recorder's Court of the City of Birmingham of loitering and noncompliance with a police order, and was sentenced to 180 days at hard labor, $100 fine and costs (R. 1-2). He appealed for trial de novo in the Circuit Court of the Tenth Judicial District, and was there charged by complaint in two counts: One, that he "did stand, loiter or walk upon a street or sidewalk within and among a group of other persons so as to obstruct free passage over, on or along said street or sidewalk . . . or did while in said group stand or loiter upon said street or sidewalk after having been requested by a police officer to move on, contrary to . . . Section 1142 of the General City Code . . . , as amended . . . " (R. 3); Two, that he "did refuse to comply with a lawful order, signal or direction of a police officer, contrary to . . . Section 1231 of the General City Code . . . " (R. 3). By motion to quash and demurrers timely filed, petitioner attacked these charges on the grounds that the ordinances under which they were laid were unconstitutional on their faces and as applied to his conduct, by force of the First and Fourteenth Amendments to the Constitution and because the charges and ordinances were vague and overbroad in contravention of those Amendments (R. 4-6). At the conclusion of the prosecution's case, he moved to exclude the testimony and for judgment on the grounds that the charges were supported by "absolutely no evidence" and that the conduct for which he was prosecuted was protected by the First and Fourteenth Amendments (R. 7). The Circuit Court overruled all these objections, found the defendant "guilty as charged in the Complaint" (R. 10), sentenced him to 180 days at hard labor and to another 61 days at hard labor in default of fine and costs, and overruled his timely motion for new trial (R. 8-9) renewing all

his federal contentions and claiming error in the exclusion of testimony intended to show that the prosecution was racial harassment (R. 10-11). The Alabama Court of Appeals affirmed the conviction and sentence (R. 136-137), expressly rejecting petitioner's federal attack on the ordinances by reference to *Phifer* v. *City of Birmingham*, 42 Ala. App. 282, 160 So. 2d 898 (1963), *cert. denied*, 160 So. 2d 902 (Ala. 1964),[9] holding the evidence sufficient to support the verdict, and rejecting petitioner's claim of error in the exclusion of testimony (R. 139-141). Timely application for rehearing was denied by that court (R. 141); the Alabama Supreme Court denied timely applications for *certiorari* and for rehearing (R. 146-147) preserving petitioner's federal contentions (R. 144-145).

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[9] In *Phifer*, the Alabama Court of Appeals sustained the overruling of a motion to quash and demurrers by petitioner Shuttlesworth's co-defendant below, these documents being identical to those filed on behalf of Shuttlesworth. Phifer's constitutional attack on Section 1142, the loitering ordinance, was rejected on the merits; Phifer's challenge to Section 1231 was not reached, because "While the demurrer in its caption is directed to the complaint 'and to each and every count thereof, separately and severally,' it is really interposed to the two counts of the complaint jointly." 42 Ala. App. at ——, 160 So. 2d at 900. Whatever the force under state law of this esoteric ruling that a paper expressly captioned "several" is to be deemed "joint," it is clear that the ground is insufficient to bar this court's review on the merits of the attack on Section 1231. Any "objection which is ample and timely to bring the alleged federal error to the attention of the trial court and enable it to take appropriate corrective action is sufficient to serve legitimate state interests, and therefore sufficient to preserve the claim for review here." *Douglas* v. *Alabama*, 380 U. S. 415, 422, see *Henry* v. *Mississippi*, 379 U. S. 443 (1965). In any event, the matter is immaterial because petitioner's attack on Section 1142 is dispositive of the case. See pp. 13-14 *infra*.

Summary of Argument

I. Petitioner having been charged by complaint with three distinct offenses, and having been found "guilty as charged in the Complaint," is entitled to have his conviction reversed by this Court if any one of the charges is constitutionally invalid.

II. Birmingham Code §1142, insofar as it makes it unlawful to stand or loiter on any sidewalk of the city after having been requested by a police officer to move on, is vague and overbroad and hence unconstitutional under the First and Fourteenth Amendments. As written, the ordinance gives any policeman absolutely arbitrary power to order a citizen—including any citizen who may be exercising his rights of free expression to picket, address a crowd, or distribute a handbill—off the streets; and subjects the citizen to severe criminal penalties if he pauses some indefinite period of time to question the policeman's order. Construction of the section by the Alabama courts so as to make unlawful only disobedience of a policeman's order addressed to one who loiters so as to obstruct free passage on the sidewalks cannot validate petitioner's conviction because (A) this narrowing construction post-dated his alleged violations and his conviction; (B) the Alabama decisions impermissibly throw the burden of proof on a defendant to disprove that he was loitering so as to obstruct free passage; and (C) a prohibition of loitering so as to obstruct free passage—lacking any requirement of *mens rea* or of actual obstruction of pedestrians—is itself unconstitutionally vague and overbroad.

III. Birmingham Code §1142, insofar as it makes it unlawful tc so stand, loiter, or walk on any sidewalk in the

city as to obstruct free passage on the sidewalk, is similarly vague and overbroad.

IV. Birmingham Code §1231, making it unlawful to refuse to comply with a lawful police order, has been construed by the Alabama Court of Appeals as applying only to police orders relating to vehicular traffic. Conviction of petitioner under the ordinance for failing to obey a police order commanding a group of pedestrians on a sidewalk to move on entirely lacks evidentiary support.

ARGUMENT

I.

Since the Verdict Against Petitioner Was General, His Conviction Must Be Reversed if Any of the Charges Is Constitutionally Invalid.

The two-count complaint against petitioner charged in its first count that he did stand, loiter or walk on a street or sidewalk in a group of persons so as to obstruct free passage over the street or sidewalk, *or* did loiter on the street or sidewalk within the group after a police request to move on. This charge is framed upon the two disjunctive sentences of the second paragraph of Birmingham City Code §1142, as amended, pp. 2-3 *supra*, making it unlawful for any person or number of persons "to so stand, loiter or walk upon any street or sidewalk in the city as to obstruct free passage over, on or along said street or sidewalk" and making it "also . . . unlawful for any person to stand or loiter upon any street or sidewalk of the city after having been requested by any police officer to move on." In its second count, the complaint charged that petitioner did

refuse to comply with a lawful police order, in violation of Birmingham City Code §1231, making it unlawful "to refuse or fail to comply with any lawful order, signal or direction of a police officer." Since petitioner was found by the Circuit Court "guilty as charged in the Complaint," familiar principles require that the conviction be reversed if any of the three offenses described in sections 1142 and 1231 are constitutionally vulnerable. *Stromberg* v. *California*, 283 U. S. 359, 367-368 (1931); *Williams* v. *North Carolina*, 317 U. S. 287, 291-293 (1942); *Thomas* v. *Collins*, 323 U. S. 516, 529 (1945).

II.

On Its Face, and as Applied to Petitioner's Conduct, Section 1142's Proscription of Standing or Loitering on a Sidewalk After a Police Order to Move on Is Vague and Overbroad in Violation of the First and Fourteenth Amendments.

A. *The ordinance as written is vague and overbroad.*

Understood as it is plainly written, Birmingham Code §1142 prohibits any loitering or standing on a sidewalk after a police order to move on. The word "also" is used to make clear that this is an offense distinct from obstructive loitering. To be guilty of it, a defendant need not have loitered so as to obstruct pedestrian traffic prior to the policeman's order, nor after the order. The order itself is not required in express terms to be lawful. Compare §1231, p. 3 *supra*. The circumstances under which an order to move on may be made by a policeman are in no way defined or restricted. The ordinance simply puts a citizen's right to be on the sidewalks of Birmingham in the unfettered discretion of the police.

Such an ordinance is patently unconstitutional under the decisions of this Court. Among the persons falling within its broad and undifferentiated grant of regulatory power to the police are classes of persons exercising their First-Fourteenth Amendment freedoms of expression in many classic forms: handbill distributors, soapbox speakers, peaceful demonstrators, religious evangelists requesting audience of passers-by. That such persons may not be denied the use of the streets by order of the police in a policeman's unconfined discretion is settled. *Lovell* v. *Griffin*, 303 U. S. 444 (1938); *Kunz* v. *New York*, 340 U. S. 290 (1951); *Cox* v. *Louisiana*, 379 U. S. 536 (1965); *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940). And see *Hague* v. *C. I. O.*, 307 U. S. 496 (1939); *Schneider* v. *State*, 308 U. S. 147 (1939) (Schneider's case); *Largent* v. *Texas*, 318 U. S. 418 (1943); *Marsh* v. *Alabama*, 326 U. S. 501 (1946); *Tucker* v. *Texas*, 326 U. S. 517 (1946); *Saia* v. *New York*, 334 U. S. 558 (1948); *Niemotko* v. *Maryland*, 340 U. S. 268 (1951); *Staub* v. *Baxley*, 355 U. S. 313 (1958).

So the ordinance cannot constitutionally mean what it purports to say. It cannot constitute the police the censors of the sidewalks in violation of the cited decisions. It cannot constrain a citizen to obey a police order whether lawful or unlawful, because "one cannot be punished for failing to obey the command of an officer if that command is itself violative of the Constitution." *Wright* v. *Georgia*, 373 U. S. 284, 291-292 (1963). See *Taylor* v. *Louisiana*, 370 U. S. 154 (1962); *Edwards* v. *South Carolina*, 372 U. S. 229 (1963); cf. *Thompson* v. *City of Louisville*, 362 U. S. 199, 206 (1960); *Barr* v. *City of Columbia*, 378 U. S. 146, 150 (1964).

But if the ordinance cannot condemn all of the conduct which on its face it appears to condemn, what conduct is

in fact prohibited by it? When does it authorize an officer to issue orders, and when does it oblige a citizen to obey them? If it be assumed that the ordinance requires obedience only to lawful orders, and that it empowers a policeman to command citizens to move on only when he can constitutionally do so, the effect of the regulation is to make the citizen guess under threat of criminal penalty the boundaries of his constitutional freedom to use the streets. That is, as one Circuit Court has aptly put it, "a difficult question which must necessarily be dependent upon the facts of the particular case," *Anderson* v. *Albany*, 321 F. 2d 649, 657 (5th Cir. 1963); see *Cox* v. *Louisiana*, 379 U. S. 536, 554-555 (1965), and an ordinance which makes this uncertain constitutional boundary the line of criminality is obnoxious to all of the objections which have caused this Court to void numerous statutes and ordinances which encroached overbroadly on constitutionally protected conduct. First, by reason of the obscurity of the constitutional boundary itself, the ordinance gives no fair notice, "no warning as to what may fairly be deemed to be within its compass." Mr. Justice Harlan, concurring, in *Garner* v. *Louisiana*, 368 U. S. 157, 185, 207 (1961); see Note, 109 U. Pa. L. Rev. 67, 76 (1960), and authorities cited in footnote 51. Second, the ordinance remains "susceptible of sweeping and improper application," *N.A.A.C.P.* v. *Button*, 371 U. S. 415, 433 (1963), furnishing in its overbreadth a convenient tool for "harsh and discriminatory enforcement by prosecuting officials, against particular groups deemed to merit their displeasure," *Thornhill* v. *Alabama*, 310 U. S. 88, 97-98 (1940), and inviting arbitrary, autocratic and harassing uses by the police. "It is enough that a vague and broad statute lends itself to selective enforcement against unpopular causes." *N.A.A.C.P.* v. *Button*, *supra*,

at 435. Finally, the threat of serious penalties—here nearly eight months at hard labor—for any citizen who, in the service of an unpopular cause, guesses wrongly the boundaries of his constitutional freedoms (or is unable to persuade a state trial judge to discredit the testimony of policemen that he guessed them wrongly), serves effectively to coerce the citizen to obey even lawless police orders and surrender through fear his constitutional rights to the free use of the streets. See *Thornhill* v. *Alabama, supra,* at 97-98; *Smith* v. *California,* 361 U. S. 147, 150-151 (1959); *Cramp* v. *Board of Public Instruction,* 368 U. S. 278, 286-288 (1961); *Bantam Books, Inc.* v. *Sullivan,* 372 U. S. 58, 66-70 (1963); *Baggett* v. *Bullitt,* 377 U. S. 360, 378-379 (1964); *Dombrowski* v. *Pfister,* 380 U. S. 479, 494 (1965); and see *United States* v. *National Dairy Prods. Co.,* 372 U. S. 29, 36 (1963) (dictum). Plainly an ordinance so written is bad on its face.

Moreover, this ordinance is susceptible of the same criticisms in another of its operative elements. Section 1142 makes it unlawful to "stand or loiter" on the street after having been told to move on. In this case petitioner was found guilty of standing or loitering on evidence that, during less than a minute and a half, he persisted in asking the officer whether the officer seriously meant that he could not stand on the sidewalk in front of Newberry's. No *scienter* or *mens rea,* no intention to disobey or flout the officer's order, was shown; apparently none is required by the ordinance as construed by the Alabama courts. Whatever obstruction to pedestrians might at any time have existed was now gone; all petitioner's companions had dispersed; and, with the explicit concerns of the officer's initial order satisfied, petitioner stood where he was for the ostensible purpose of inquiring what the officer commanded, and perhaps

of verbally contesting his authority to make the command. The officer did not reply to petitioner's question or otherwise explain himself; he merely repeated his command—whose justification had faded or was fading; and petitioner repeated his question. If evidence of such conduct is constitutionally sufficient to support conviction under §1142, see *Thompson* v. *City of Louisville*, 362 U. S. 199 (1960), the ordinance has been construed in such a way as to jeopardize any citizen who pauses to question an officer's order. At some unascertainable point his delay in complying causes him to "stand or loiter" and thereby makes his conduct criminal. Here again the vice of the ordinance is that it cannot mean what it purportedly says, see *Thompson* v. *City of Louisville, supra,* at 206, and no principle to limit what it purportedly says sufficiently intelligible to accord fair notice and assure non-arbitrary application appears.[10] When this deficiency is coupled with the vagueness of the ordinance as to the circumstances under which a policeman may make an order to move on, §1142 becomes little more than a snare. It is nigh impossible for the citizen to ascertain the propriety of the policeman's command, and he who stops to question may find himself a misdemeanant.[11]

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[10] Cf. *Commonwealth* v. *Carpenter*, 325 Mass. 519, 91 N. E. 2d 666 (1950), voiding an ordinance which made it unlawful to "willfully and unreasonably saunter or loiter for more than seven minutes after being directed by a police officer to move on."

[11] In *Cox* v. *Louisiana*, 379 U. S. 536, 551 (1965), this Court said that a statute punishing one who "fails or refuses to disperse and move on" when ordered to do so by an officer would be sufficiently specific if the conditions under which the officer's order might issue were narrowly restricted. Here they are unrestricted, as in *Cox;* and the language "stand or loiter," construed without a requirement of intent to resist the officer, is considerably more vague than "fails or refuses to disperse." See *Carlson* v. *California*, 310 U. S. 106, 112 (1940).

On the present record, the potential of §1142 for unfair, arbitrary and discriminatory application has been fully realized. Had Newberry's windows presented a fetching Easter display, and had a crowd of attracted persons paused to look, filling half the sidewalk for a minute and a half, it is inconceivable that Patrolman Byars would have commanded them to move on. Had such a command been made, and—while the crowd was dispersing—had one such window-shopper asked Byars did Byars really mean he could not look in the window, it is inconceivable that he would have been arrested and charged, and phantasmagoric that he would have been convicted and sentenced to almost eight months at hard labor. Had a Newberry's delivery man blocked the same half a sidewalk for the same ninety seconds, or had he stopped to complain to an officer when told to move on, no sane mind could imagine that he would be found in petitioner Shuttlesworth's posture today. Yet if Shuttlesworth was warned that his position was different from that of the window-shopper or delivery man, it was only because Shuttlesworth is a Negro and a "notorious" civil rights leader in Birmingham, Alabama. And however convincing to a state court may be Patrolman Byars' protestations that he did not recognize Shuttlesworth when he proceeded through Newberry's to observe, command and then arrest him, any non-racial explanation for the ultimate result in this prosecution is delusive. The very fact that, under this Court's ordinary practice, Byars' testimony must escape strict review here is the strongest reason for invalidation of the vague ordinance under which such a conviction could occur.

B. *The construction of §1142 by the Alabama courts has not cured its objectionable vagueness and overbreadth.*

Petitioner's case and that of his co-defendant below, Reverend James S. Phifer, were the first involving the ordinance to reach the Alabama appellate courts. In neither case did the Alabama Court of Appeals attempt any limiting construction of §1142. *Phifer* v. *City of Birmingham*, 42 Ala. App. 282, 160 So. 2d 898 (1963), *cert. denied*, 160 So. 2d 902 (Ala. 1964);[12] *Shuttlesworth* v. *City of Birmingham*, 42 Ala. App. 296, 161 So. 2d 796 (1964), *cert. denied*, 161 So. 2d 799 (Ala.), R. 137-141. The appeal in *Shelton* v. *City of Birmingham*, 42 Ala. App. 371, 165 So. 2d 912 (1964), involved Birmingham Code §1231, p. 3 *supra* (noncompliance with a police order); affirming a civil rights demonstrator's conviction under that ordinance, the Court of Appeals adopted the rule that "the failure to comply with a police officer's order to 'Move on,' 'can be justified only where the circumstances show conclusively that the police officer's direction was purely arbitrary and was not calculated in any way to promote the public order.'" 42 Ala. App. at ——, 165 So. 2d at 913.[13] Judge Cates dis-

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[12] Phifer's conviction was reversed for want of evidence that he had loitered or stood on the sidewalk after being told to move on. Since the record was clear that everyone save Shuttlesworth had dispersed at Byars' order, and that Byars himself did not believe Phifer had failed to comply with his order, this decision is uninformative as to the meaning of §1142. In sustaining the ordinance against Phifer's claim that it was facially unconstitutional, the Court of Appeals characterized it as a traffic regulation, but this characterization says nothing about the incidence or operative elements of §1142. The cases cited by the court as involving "similar" ordinances, 42 Ala. App. at ——, 160 So. 2d at 900, in fact involve several different sorts of regulations.

[13] The court quotes *People* v. *Galpern*, 259 N. Y. 279, 181 N. E. 572 (1932), and cites *State* v. *Taylor*, 38 N. J. Super. 6, 118

agreed on this latter point. *Smith* v. *City of Birmingham*, 42 Ala. App. 467, 168 So. 2d 35 (1964), and *Middlebrooks* v. *City of Birmingham*, —— Ala. App. ——, 170 So. 2d 424 (1964), *cert. denied*, 170 So. 2d 427 (Ala. 1964), applied the rule of *Shelton* to Birmingham Code §1142, with Judge Cates still objecting that that rule impermissibly required a defendant "to come into court and disprove the policeman's case." *Middlebrooks* v. *City of Birmingham, supra*, —— Ala. App. at ——, n. 3, 170 So. 2d at 426 n. 3. In the *Smith* opinion, the court in an extended footnote first announced the view that §1142 was directed at loitering so as to obstruct the streets or sidewalks; the implication of the footnote, not altogether clear, is that the sort of order envisioned by §1142, following which one may not stand or loiter, is an order directed to an individual who is previously in violation of the disjunctive provision of the ordinance prohibiting standing, loitering or walking "so . . . as to obstruct free passage" on a street or sidewalk. *Smith* v. *City of Birmingham, supra*, 42 Ala. App. —— at n. 1, 168 So. 2d at 36-37, n. 1.[14] The *Middlebrooks* opinion definitively adopted this view. Section 1142:

A. 2d 36 (1955), which also quotes *Galpern*, 38 N. J. Super. at 30, 118 A. 2d at 49, but is otherwise irrelevant. The facts in *Galpern*, which sustain the conviction of a lawyer for congregating with others on a sidewalk and refusing to move on when ordered by police, evidence that the rule of the New York decision, adopted by the Alabama Court of Appeals, leaves the police judgment to issue a dispersal order virtually immune against judicial review.

[14] The footnote is confusing because it quotes or summarizes decisions of the courts of other States—whether for purposes of approval or of distinction is unclear—which rest on statutes different from §1142 and differing among themselves. The holding in the *Smith* case turns on construction of the term "sidewalk" in §1142, and so is not helpful on the larger questions posed by the ordinance.

. . . is directed at obstructing the free passage over, on or along a street or sidewalk by the manner in which a person accused stands, loiters or walks thereupon. Our decisions make it clear that the mere refusal to move on after a police officer's requesting that a person standing or loitering should do so is not enough to support the offense.

That there must also be a showing of the accused's blocking free passage is the ratio decidendi of *Phifer* v. *City of Birmingham* . . . and *Shuttlesworth* v. *City of Birmingham* . . . In this respect, we distinguish our reasoning from that employed in *Tinsley* v. *City of Richmond,* 202 Va. 707, 119 S. E. 2d 488. See *Smith* v. *City of Birmingham.* . . .

The judges of this court in *Shelton* v. *City of Birmingham* . . . divided two to one as to whether or not evidence of a policeman ordering a defendant to move on under a similar ordinance was sufficient to make a prima facie case. Regardless of the quantum of proof required, the court in the instant case is again, as it was in the *Shelton* case, unanimous in its conclusion [affirming a civil rights demonstrator's conviction] (—— Ala. App. at ——, 170 So. 2d at 426).

Thus, as now viewed by the Alabama Court of Appeals, the loitering-after-order provision of §1142 is violated only when a defendant (1) stands, loiters or walks on the streets or sidewalks so as to obstruct free passage, (2) is requested by an officer to move on, (3) thereafter loiters or stands on the street or sidewalk. At trial on the charge, the fact that the policeman requested the defendant to move on makes a prima facie case that the defendant was previously standing, loitering or walking so as to obstruct the streets

or sidewalks, and the defendant can justify disobedience of the order only if he can show that it was "purely arbitrary and was not calculated in any way to promote the public order."

These decisions concededly narrow the sweeping scope of §1142 as written. However, they are ineffective for several reasons to give constitutional validity to petitioner's conviction.

First, the decisions post-date petitioner's arrest and conviction, and so cannot retrospectively validate the ordinance as applied in his case. *Bouie* v. *City of Columbia*, 378 U. S. 347, 352-354 (1964). Petitioner took this sweeping regulation as he found it written; as written it was unconstitutional on its face; because unconstitutional on its face, he was entitled to disobey it. Cf. *Lovell* v. *Griffin*, 303 U. S. 444 (1938); *Largent* v. *Texas*, 318 U. S. 418 (1943); *Staub* v. *Baxley*, 355 U. S. 313 (1958).

Second, the limitation of a citizen's obligation to obey a police order to circumstances where the citizen has been loitering so as to obstruct free passage prior to the order is an ineffective limitation, coupled as it is with the rule that the fact of issuance of the order establishes prima facie the circumstance of prior obstructive loitering. The effect of the "prima facie" rule is to require the citizen who disobeys a police order to prove at his trial that he was not loitering so as to obstruct free passage prior to the order. That requirement in effect erases prior loitering as an operative element of the charge, for the city need not prove it at the trial. And it can hardly be supposed that the issuance of a police order has a sufficient rational tendency to show the order's justification to permit Alabama constitutionally to shift the burden of proof of non-justifica-

tion to the defendant. *Dombrowski* v. *Pfister*, 380 U. S. 479, 494-496 (1965); see *Tot* v. *United States*, 319 U. S. 463, 469 (1943). What is at issue here is the method of litigation not merely of an element of the charge of loitering, but of a defendant's First-Fourteenth Amendment defense to that charge.[15] On such an issue, the State may not consistently with those Amendments shift the burden of proof to the accused; *Speiser* v. *Randall*, 357 U. S. 513 (1958), is squarely dispositive. Indeed, §1142 presents a far stronger case of unconstitutional burden-shifting than *Speiser*. For the defendant cannot fairly be required to disprove the policeman's justification for an order at the trial unless the defendant be given some opportunity to inquire concerning the basis of the order at the time it is issued. But the vagueness of the prohibition that the defendant "stand or loiter" after the order, see pp. 2-3 *supra*, makes any pause for purposes of inquiry impermissibly hazardous.

Finally, even if §1142, as applicable in petitioner's case, clearly precluded conviction except on proof that the petitioner had stood, loitered or walked on the sidewalk so as to obstruct free passage, and had then wilfully refused

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[15] Although the petitioner's version of the facts surrounding his arrest was that he was merely walking on the street when accosted by Patrolman Byars, the version upon which the State of Alabama relies to support his conviction is that petitioner was addressing a group of persons on a street corner. That this is activity protected by the First and Fourteenth Amendments is hardly disputable. In any event, the ordinance in its normal application clearly applies to many sorts of First-Fourteenth Amendment activity, see p. 15 *supra;* and, where this is the case, petitioner need not show that his own conduct was protected to challenge the ordinance for overbreadth. *Thornhill* v. *Alabama*, 310 U. S. 88 (1940); *Aptheker* v. *Secretary of State*, 378 U. S. 500 (1964).

to obey a policeman's order to move on, the ordinance would remain void for overbreadth. The point was decided under a virtually identical ordinance in *In Re Bell*, 19 Cal. 2d 488, 122 P. 2d 22 (1942) (per Mr. Justice Traynor),[16] upon authority of this Court's decisions in *Thornhill* v. *Alabama*, 310 U. S. 88 (1940), and *Carlson* v. *California*, 310 U. S. 106 (1940). Justice Traynor reasoned—rightly, petitioner believes—that this "sweeping prohibition . . . would apply equally against peaceful pickets, shoppers engrossed in a window display, invalids in wheelchairs, acquaintances who stand engaged in conversation." 19 Cal. 2d at 497, 122 P. 2d at 28.[17] The proscription of standing, loitering, or walking on any sidewalk encompasses all these classes of persons, together with others—the peaceful demonstrators in *Fields* v. *South Carolina*, 375 U. S. 44 (1963), and *Henry* v. *City of Rock Hill*, 376 U. S. 776 (1964); the orators in *Kunz* v. *New York*, 340 U. S. 290 (1951), and *Niemotko* v. *Maryland*, 340 U. S. 268 (1951)—who exercise their First-Fourteenth Amendment freedoms on the public sidewalks. It is hardly debatable that an interdiction in even the narrowest of these terms, an interdiction of "loitering" *sim-*

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[16] The ordinance in *Bell* was broader in one aspect than §1142, making it unlawful "to loiter, stand, or sit upon any public highway, alley, sidewalk or crosswalk so as to in any manner hinder or obstruct the free passage therein or thereon of persons or vehicles passing or attempting to pass along the same, or so as to in any manner annoy or molest persons passing along the same." But Justice Traynor's opinion makes clear that the California Supreme Court found the provision overbroad in its "obstruct" aspect independently of its "molest" aspect. 19 Cal. 2d at 496, 122 P. 2d at 27-28.

[17] That these applications are not fantastic imaginings—at least where citizens on the streets make themselves personally obnoxious to officers—is evidenced by the record in *People* v. *Galpern*, note 13, *supra*. The constitutionality of the statute as applied in that case was not before the court.

pliciter, would be overbroad and hence unconstitutional.[18] And the qualifications that the loitering, or standing or walking, constitute "blocking free passage," *Middlebrooks*

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[18] Every court except the Supreme Court of Virginia which has considered the constitutionality of a proscription of loitering *simpliciter* has held such a proscription void for overbreadth and vagueness. *Territory of Hawaii* v. *Anduha*, 48 F. 2d 171 (9th Cir. 1931); *Soles* v. *City of Vidalia*, 92 Ga. App. 839, 90 S. E. 2d 249 (1955); *State* v. *Caez*, 81 N. J. Super. 315, 195 A. 2d 496 (1963); *City of St. Louis* v. *Gloner*, 210 Mo. 502, 109 S. W. 30 (1908); *People* v. *Diaz*, 4 N. Y. 2d 469, 151 N. E. 2d 871 (1958); *City of Akron* v. *Effland*, 112 Ohio App. 15, 174 N. E. 2d 285 (1960); *Ex parte Mittelstaedet*, 164 Tex. Crim. 115, 297 S. W. 2d 153 (1957); cf. *State* v. *Hunter*, 106 N. C. 796, 11 S. E. 366 (1890); *Village of Deer Park* v. *Schuster*, 16 Ohio Ops. 485, 30 Ohio L. Abs. 466 (C. Com. Pls. 1940). *Contra: Benson* v. *City of Norfolk*, 163 Va. 1037, 177 S. E. 222 (1934); *Tinsley* v. *City of Richmond*, 202 Va. 707, 119 S. E. 2d 488 (1961), app. dism'd, 368 U. S. 18 (1961).

State courts have sustained certain limited classes of regulations prohibiting loitering, standing or wandering on the streets:

(A) Prohibitions of loitering at late hours or under suspicious circumstances and failing to give a good account of oneself: *Dominguez* v. *City and County of Denver*, 147 Colo. 233, 363 P. 2d 661 (1961); *City of Portland* v. *Goodwin*, 187 Ore. 409, 210 P. 2d 577 (1949). But such regulations are construed to require overt suspicious conduct, *ibid.*; *Harris* v. *District of Columbia*, 132 A. 2d 152, 154 (M. C. A. D. C. 1957), *rev'd on other grounds*, 251 F. 2d 913 (D. C. Cir. 1958); *Harris* v. *District of Columbia*, 192 A. 2d 814 (C. A. D. C. 1963); *State* v. *Salerno*, 27 N. J. 289, 296, 142 A. 2d 636, 639 (1958) (dictum); absent such a limitation, they are unconstitutional, *Headley* v. *Selkowitz*, 171 So. 2d 368 (Fla. 1965).

(B) Prohibitions of loitering by specified classes of persons (known thieves, pickpockets, etc.) often for specific illegal purposes: *Harris* v. *District of Columbia*, *supra*, in 132 A. 2d 152; *In re Cregler*, 56 Cal. 2d 308, 363 P. 2d 305, 14 Cal. Rptr. 289 (1961). These are the classical "vagrancy" loitering regulations.

(C) Prohibitions of loitering in certain specified places whose nature suggests a specific illicit purpose of the loiterer: schools, *State* v. *Starr*, 57 Ariz. 270, 113 P. 2d 356 (1941); *Phillips* v. *Municipal Court*, 24 Cal. App. 2d 453, 75 P. 2d 548 (1938); *People* v. *Johnson*, 6 N. Y. 2d 549, 161 N. E. 2d 9 (1959); railroad toilets or platforms, *People* v. *Bell*, 306 N. Y. 110, 115 N. E. 2d 821

v. *City of Birmingham, supra,* does not sufficiently narrow the interdiction. This qualification does not require any purpose to obstruct, or any knowledge that free passage is obstructed, merely that "free passage" be blocked.[19] What constitutes "free passage" remains unclear, and thus is left at the risk of the defendant, the whim of the policeman (whom the defendant may not question), the arbitrary determination of a magistrate or trial court. No use of the

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(1953); waterfront docks and warehouses, *People* v. *Merolla,* 9 N. Y. 2d 62, 172 N. E. 2d 541 (1961). Such regulations are regularly construed to forbid only loitering for the specific illicit purpose. *Ibid.; In re Huddleson,* 229 A. C. A. No. 3, 721, 40 Cal. Rptr. 581 (1964).

(D) Prohibitions of presence on the streets by specified classes of persons (ordinarily minors) at specified times: *Thistlewood* v. *Trial Magistrate for Ocean City,* 236 Md. 548, 204 A. 2d 688 (1964). These are the classical curfew regulations.

(E) Prohibitions of actual obstruction of streets or sidewalks by loitering or standing: *Ex parte Bodkin,* 86 Cal. App. 2d 208, 212, 194 P. 2d 588, 591-592 (1948); *City of Chariton* v. *Fitzsimmons,* 87 Iowa 226, 229-230, 54 N. W. 146, 147 (1893); *State* v. *Sugarman,* 126 Minn. 477, 479, 148 N. W. 466, 468 (1914); *Commonwealth* v. *Challis,* 8 Pa. Super. 130, 132 (1898); *City of Tacoma* v. *Roe,* 190 Wash. 444, 445, 68 P. 2d 1028, 1029 (1937). At the cited pages the respective courts construe these regulations as requiring actual obstruction of persons attempting to use the sidewalks, not mere loitering in such a manner as might obstruct hypothetical users of the sidewalks. And see *Whaley* v. *Cavanagh,* 237 F. Supp. 900 (S. D. Cal. 1963) *aff'd per curiam on opinion below,* 341 F. 2d 295 (9th Cir. 1965), where the facial constitutionality of the regulation was not challenged and actual obstruction of pedestrians was found.

[19] On this ground, the decisions in paragraph (E) of the preceding footnote are distinguishable. The Alabama Court of Appeals in *Middlebrooks* apparently meant to justify the issuance of a police order under §1142 whenever, in the language of the first sentence of the second paragraph of that section, "any person or number of persons . . . *so* stand, loiter or walk upon any street or sidewalk in the City *as to obstruct free passage* over, on or along said street or sidewalk." (Emphasis added.)

sidewalks that can be imagined fails in some measure to obstruct free passage—even though no pedestrian in fact be passing or impeded. The window-shopper, the delivery man, the peaceful picket, the peaceful demonstrator, the pedestrian who kneels to tie a shoe-lace, all obstruct free passage.

> It is almost needless to say that such an act cannot be enforced, and that no attempt will be made to enforce it, indiscriminately. It may be enforced against those poor hapless ones who are unable to assert or protect their rights, but as to all others it will remain a dead letter. It may be enforced to suppress one class of idlers in order to make a place more attractive to idlers of a more desirable class . . . ,[20]

or, as here, to suppress the members of an unpopular race. If the City of Birmingham wishes to prohibit the actual obstruction of pedestrians by standing, loitering or walking on a sidewalk with a purpose to obstruct it, the City may do so in those narrow terms. But a prohibition of all standing, loitering or walking in such a manner as to obstruct free passage sweeps too broadly; and disobedience of a police order justifiable in those vague terms may not constitutionally be punished. *Cox* v. *Louisiana, supra,* 379 U. S. at 551.[21]

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[20] *Territory of Hawaii* v. *Anduha,* 48 F. 2d 171, 173 (9th Cir. 1931).

[21] *Tinsley* v. *City of Richmond,* 368 U. S. 18 (1961), is not apposite in this regard. Nowhere in the Virginia courts or in her jurisdictional statement in this Court did Tinsley invoke the First Amendment, either in her own behalf or as a ground for general invalidity of the ordinance there involved. Nor, on the

III.

On Its Face, and as Applied to Petitioner's Conduct, Section 1142's Proscription of Standing, Loitering or Walking on a Sidewalk so as to Obstruct Free Passage Thereon Is Vague and Overbroad in Violation of the First and Fourteenth Amendments.

For the reasons stated in the preceding paragraph, that portion of Birmingham Code §1142 which purports to make it unlawful "for any person or any number of persons to *so* stand, loiter or walk upon any . . . sidewalk in the City *as to obstruct free passage* over, on or along said . . . sidewalk" (emphasis added) is too vague and overbroad to meet First-Fourteenth Amendment demands.

IV.

Petitioner's Conviction for Violation of §1231 Is Supported by No Evidence.

If construed as broadly as it is written, Birmingham Code §1231, making it "unlawful for any person to refuse or fail to comply with any lawful order, signal or direction of a police officer," would be objectionable for the reasons stated at pp. 14-15 *supra*. The Alabama Court of Appeals,

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facts of *Tinsley*, was any colorable First Amendment claim presented. Compare note 15 *supra*. Tinsley put her contentions simply on a right of personal liberty to move about the streets, a right of the sort given expression in *Pinkerton* v. *Verberg*, 78 Mich. 573, 44 N. W. 579 (1889), quoted in her jurisdictional statement at p. 9, n. 4. But it is settled that the standards of permissible vagueness are uniquely stringent where a challenged regulation touches the freedoms of expression protected by the First Amendment as incorporated in the Fourteenth. Compare *N.A.A.C.P.* v. *Button*, 371 U. S. 415, 432 (1963), and authorities cited, *with United States* v. *National Dairy Prods. Co.*, 372 U. S. 29, 36 (1963).

however, has put a quite narrow construction on the section. Reversing the conviction of petitioner's co-defendant below, that court said of §1231:

> . . . This section appears in the chapter regulating *vehicular traffic,* and provides for the enforcement of the orders of the officers of the police department in directing *such traffic.* There is no suggestion in the evidence that the defendant violated any *traffic regulation* of the city by his refusal to move away from Shuttlesworth when ordered to do so. (*Phifer* v. *City of Birmingham,* 42 Ala. App. 282, 160 So. 2d 898, 901 (1963), *cert. denied,* 160 So. 2d 902 (Ala. 1964).)

Nor is there any evidence in the present case that petitioner Shuttlesworth violated any vehicular traffic regulation. Thus—unless the Alabama Court of Appeals is permitted, Alice-like and in blatant violation of due process of law—to change the meaning of the State's penal statutes case by case, petitioner's conviction under §1231 is entirely lacking in evidentiary support. *Thompson* v. *City of Louisville,* 362 U. S. 199 (1960); *Garner* v. *Louisiana,* 368 U. S. 157 (1961); *Taylor* v. *Louisiana,* 370 U. S. 154 (1962); *Fields* v. *Fairfield,* 375 U. S. 248 (1963); *Barr* v. *City of Columbia,* 378 U. S. 146 (1964).

CONCLUSION

The judgment of the Alabama Court of Appeals affirming petitioner's conviction should be reversed.

Respectfully submitted,

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